

HONG KONG / JUDGMENT

KK, H v. PK, H

[2025] HKCA 982

COURT

Court of Appeal

DECIDED

6 November 2025

CASE / FILE NUMBER

CAMP74/2025

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

CAMP 74/2025, [2025] HKCA 982

On Appeal From [2025] HKFC 29

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

MISCELLANEOUS PROCEEDINGS NO. 74 OF 2025

(ON AN INTENDED APPEAL FROM FCMC NO. 8332 OF 2017)

BETWEEN

KK, H

Petitioner

and

PK, H

Respondent

[Relocation of Child]

Before : Hon Cheung JA and H. Au-Yeung J in Court

Date of Decision : 6 November 2025

DECISION

Hon Cheung JA (giving the Decision of the Court) :

I.

Renewed application for leave to appeal (out of time)

This is the Petitioner Father's renewed application for leave to appeal out of time against the judgment of Deputy District Judge Robin Egerton ('the Judge') on 13 December 2024 who dismissed the Father's application to have the sole care and control of A, the child of the family and granted the Respondent Mother care and control of A. The Judge further allowed the Mother's application to have A relocated to Singapore with her. The Judge had dismissed the Father's application for leave to appeal and stay of execution of the Relocation Order.

We will deal with this application on paper.

II.

Background

The relevant background matters are as follows.

The parties ('the Parents') were married in February 2013. A, the child of the family, was born in 2015. After A was born, the Mother primarily stayed home to care for A with the assistance of a domestic helper. It is the Mother's case that she has been the primary carer of A since birth. The Father participated in caring for A before work or during his days off.

Due to marital discord, the Father filed a divorce petition in June 2017, but the Parents continued to live in their matrimonial home. By the order of 15 December 2017, the Parents have joint custody of A, with interim care and control to the Mother and interim defined access to the Father. In April 2018, the Mother and A moved out and A had been under the Mother's continuous care since then.

A decree nisi for their divorce was pronounced on 8 January 2019, and was made absolute on 31 March 2025.

At the time of trial, the Mother was offered employment in Singapore. Her employer relocated her to Singapore, offered her a position there, and assisted with her Singapore Employment Pass which was approved on 31 May 2024, and a Dependent's Pass for A, approved on 9 July 2024.

As observed by the Judge, the Parents had been protracted in chronic litigation with regard to the appropriate arrangements for A and ancillary relief between each other for over seven years.

By her summons dated 2 November 2023, the Mother sought an order for leave to be granted to her to remove A from Hong Kong to Singapore, subject to her undertaking to mirror the access arrangements in the Singapore Court, and for the decree nisi for divorce pronounced on 8 January 2019 to be made absolute.

III.

The judgment below

Over a five-day hearing, the Judge heard evidence from the Mother, the Father, the Social Welfare Officer Ms Chan Wai-size ('Ms Chan'), the Clinical Psychologist Ms Ho Siuying ('Ms Ho') and the Mother's fiancé at the time, Mr N ('Mr N'). The Official Solicitor, Ms Melody Ho had filed seven reports between 28 November 2022 and 2 October 2024.

The Judge having considered the evidence as a whole concluded that it is not in A's best interests for her care and control to be changed. He dismissed the Father's application for sole care and control and held that A's sole care and control shall remain with the Mother.

The Judge set out the relevant legal principles discussed by this Court in BA v BL (Child relocation) [2019] 4 HKLRD 23 at [4.1][4.14], and the guiding approach given by Thorpe LJ in Payne v Payne was applied.

The Judge made the following findings on the issue of relocation :

1)

The Mother's proposal was genuine and realistic in the sense that it is not motivated by some selfish desire to exclude the Father from the child's life.

2)

The Father's opposition was motivated by genuine concern for the future of the child's welfare and not driven by some ulterior motive. The Judge, however, commented that the Father remained focused on what he perceived to be his own best interests in his relationship with A rather than the wider and broader vision of what is in A's best interests holistically.

3)

It would be detrimental to the Mother if her application for relocation is refused particularly with regard to her emotional and financial stability.

4)

With an overriding review of A's best interests as the paramount consideration, the Mother's application to permanently relocate to Singapore with A should be granted.

Accordingly, the Judge granted leave to the Mother to permanently remove A from Hong Kong to Singapore from 1 January 2025. Care and control was granted to the Mother, with daily remote and weekend/holiday access granted to the Father. It was also ordered that the Mother be required to obtain a mirror order in Singapore to reflect the terms of the orders granted in Hong Kong.

By an order dated 7 January 2025, the Judge on the Mother's application, agreed to vary the order of 13 December 2024 to enable the Mother to relocate with A without obtaining a mirror order prior to relocating to Singapore upon the Mother's following undertakings to the Court :

1)

to take all reasonable steps to pursue the mirroring process in the appropriate court in Singapore as soon as practicable, including continuing to work closely with Singapore lawyers upon relocation.

2)

to continue to support the Petitioner's defined access rights as stipulated in the order of 13 December 2024.

3)

to return to Hong Kong with 'A' should the Court require her to do so.

Since January 2025, the Mother has relocated to Singapore with A, and A has commenced schooling there since 20 January 2025.

The Mother remarried on 2 June 2025 to Mr N, of whom she had been in a committed relationship with since the summer of 2019. She and A now reside with him in Singapore.

IV.

Legal Principles

1)

Leave to appeal

The requirement for granting leave to appeal is set out in section 63A(2)(a) of the District Court Ordinance, Cap. 336. Leave to appeal shall not be granted unless the Court is satisfied that the intended appeal has a reasonable prospect of success or there is some other reason in the interest of justice why the appeal should be heard. It is well established that a reasonable prospect of success means an appeal with prospects that are more than fanciful without having to be probable (SMSE v KL [2009] 4 HKLRD 129 at [17]).

A relocation order made by the judge is an exercise of discretion. It is well established that in challenging the exercise of discretion, it is not enough to establish that the appeal court might have made a different order. It is only where the discretion was wrongly exercised when, for example, the Judge has erred in principle, taken irrelevant factors into account, ignored relevant factors or where the decision is plainly wrong, or that the decision exceeds the generous ambit within which reasonable disagreement is possible, would the appeal court interfere: (YSG (YX) v LYAG [2023] HKCA 1319, [27]).

Insofar as a party seeks to challenge the judge's findings of fact, it must be shown that the judge had gone plainly wrong, such as his evaluation was tainted by a misapprehension of facts, or that he took into account irrelevant matters or failed to take into account relevant matters, or that his conclusion was one that is outside the generous ambit within which a reasonable disagreement is possible, before the appeal court would interfere: *YSG (YX) v LYAG* (supra), [28].

2)

Time to make application

Under Order 58, rule 4A of the Rules of the District Court, Cap. 336A, a renewed application to the Court of Appeal for leave to appeal should be made within 14 days from the date of the refusal of leave by the Judge.

Where the application is not made within time and extension of time is required, the Court in considering whether to extend time will take into account: 1) the length of delay; 2) the reasons for the delay; 3) the prospect of success of the intended appeal; and 4) the prejudice to the other party if an extension of time were granted.

V.

The proposed grounds of appeal

The Father is repeating the same proposed grounds of appeal that were advanced before the Judge in his earlier application for leave to appeal.

The proposed grounds of appeal are summarized as follows :

1)

The Judge failed to adequately consider and/or materially underestimated the emotional and psychological harm that relocation would bring upon A in terms of her relationship with the Father and her paternal side of the family, and has failed to recognize the status quo that A has established in Hong Kong; (Ground 1)

2)

The Judge erred in giving undue weight to the expressed views of A, and failed to adequately consider or consider at all that (1) A's views are not her genuine wishes and (2) A lacks sufficient permanent relocation experience to form an informed view on the matter; (Ground 2) and

3)

The Judge placed undue weight to the financial component of this case, in particular, the Father's application to vary maintenance pending suit is still outstanding. (Ground 3).

VI.

Our view

1)

Delay

The Father should have issued his renewed application for leave to appeal in the Court of Appeal by 26 February 2025. He was late by about one month and 14 days in issuing the summons on 10 April 2025. This is not an insubstantial delay. However, we will focus on the merits of the Father's intended appeal, bearing in mind the case involves a child whose best interest is the paramount consideration of the Court.

2)

Proposed grounds of appeal

(1)

Ground 1

Ground 1 alleges that the Judge materially underestimated the emotional and psychological harm that the relocation to Singapore would cause to A's relationship with the Father and her paternal side of the family.

The narratives which had been raised by the Father to illustrate the possibility of the Mother obstructing or causing a cessation of contact between A and the Father or his extended family have all been addressed and taken into account by the Judge (at [35][36] Judgment). Ms Chan also noted the instances in her October 2024 report.

The Judge acknowledged the difficulties the Father met in access, as well as the circumstances in the Fact Finding Ruling made by Deputy District Judge S Allison dealing with allegations by the Mother against the Father which were unhelpful to effective access (at [45] Judgment). But the Judge also explained why he thinks that access had stabilized and improved since July 2023 (at [49] Judgment), emphasizing Ms Chan's observation that access between the Parents had been running smoothly since the July 2023 Order, following a few months of adjustment by the Parents.

Under section 3(a)(i)(B) of the Guardianship of Minors Ordinance, the Judge shall give due consideration to any material information including any report of the Director of Social Welfare. In this case, seven Social Welfare Reports dated between 23 November 2017 and 2 October 2024 were considered in the Judgment, all of which recommended care and control to the Mother.

The Judge found that A loves her Father and wishes to have an interactive relationship with him. The Judge specifically relied on the recommendations of Ms Chan's report dated 2 October 2024 when he prescribed defined access (at [71] Judgment) to ensure that A's relationship with the Father and A's extended paternal family is maintained. Ms Chan had given oral evidence at court and was cross-examined by both Parents. She has been involved in the case since June 2023, and we are of the view that her observations and recommendations were rightfully relevant and were given due weight by the Judge.

As noted by the Judge, the Reports lodged by the Official Solicitor, Ms Melody Chui and Ms Chan both concluded that access had stabilized and improved since the July 2023 Order, and there is evidence from Ms Chan of the Mother's progressive approach to A's arrangements (at [49] Judgment).

The Judge had also found the Mother's proposals to facilitate remote, term time and holiday access to be both 'genuine, realistic and not motivated by an intention to exclude the Father from A's life.' (at [56] Judgment)

Taking the Judgment as a whole, and the factors considered by the Judge to assess the suitability of A relocating to Singapore, we do not see any exercise of discretion in a manner which was wrong in principle or erred in law.

We are also of the view that the Judge had duly considered the potential impact on A in respect of her relationship with the Father.

As for the Father's concern that therapy for A has not been carried out, we note that this form of counselling was not recommended by Ms Chan nor Ms Ho as a prerequisite for A's relocation. The October 2024 Report emphasized, that in order to prioritize A's best interests, both Parents should focus on her emotional stability and happiness by setting aside 'personal conflicts and letting go of past grievances.' Ms Chan further suggested that seeking professional guidance, such as family mediation and clinical psychological services for the Parents, may actually facilitate constructive conversations and foster mutually agreeable plans for effective coparenting, which appears to be much more pertinent for the best interests of A.

Ground 1 has no reasonable prospect of success.

(2)

Grounds 2 and 3

Grounds 2 and 3 argue that the Judge assigned too much or too little weight to certain issues. The question of what weight is to be placed on relevant considerations is generally a matter for the judge. As seen in various parts of the Judgment, the Judge was aware and did consider the salient matters in question, which was mainly i) A's wishes (and whether or not they were genuine), and ii) both Parents' financial circumstances in assessing the appropriateness of relocation.

i)

The views of A on relocation

The Father submitted that the Judge's assessment of A's genuine wishes is flawed because he failed to consider the likelihood that A's expressed wishes were driven by a desire to please the Mother. We do not agree.

The Judge particularly had emphasized at [41] of the Judgment, the exchange between the Official Solicitor and Ms Ho, of which he considered as significantly relevant to his assessment of the level of A's maturity.

The Judgment also acknowledged that A, who was 9 at the time of trial, is of an age and understanding where her wishes should be relevant. A's wishes, as considered by Ms Chan in both 2023 and 2024 were set out by the Judge (at [48] Judgment). They show that A has the ability to differentiate and specifically describe her feelings towards both of her Parents, she appears to acknowledge the difficulty of her own position and expressed a clear preference to live with her mother. The close relationship between A and the Mother appears genuine and well-supported.

We agree that A was not too young to express her views on relocation, and the Judge did not err in placing weight on A's views and preference on relocation. Her views are rational despite clear attachment to the Mother, and she has been able to articulate her wishes to strike a balance between the access of both Parents.

Another basis for the Father's claim that Ms Chan's reports are flawed is that they were generated after a period of six months where access had been restricted around the start of 2022 because of the Mother's allegations made against the Father. The other instances cited by the Father in his submissions to illustrate the Mother's obstructive behavior in facilitating access also mainly occurred on or before the year 2022. However, both the Reports of Ms Chan and Ms Ho made in 2024 observed stable access since the end of 2023. The Judge held :

,

49.

It is clear from the Reports lodged by the [Official Solicitor] and the Social Welfare Officer that access has stabilised and improved since the order of 28 July 2023. In addition to which Ms. Chan gave evidence as to the Mother's "progressive" approach to A's arrangements.'

We agree with the Judge's view that the Reports generated by both Ms Chan and Ms Ho are significantly relevant, and should have been given due weight, and that A's emotions wishes are inconsistent with alienation and brainwashing or that the Mother's objective is to 'remove the daughter from the Father's life' (at [64] Judgment).

The Father also cites an earlier report by a social welfare officer Ms Chen Kueilan in 2022, which he claims supports his assertion that A has 'no real experience' of staying with Mr N in Singapore, and thus A's expression of wishes may be a result of the Mother's coaching.

The Judge had noted at [39] of the Judgment the exchange between the Father and Mr N at trial, which he viewed as crucial in illustrating Mr N's role if the Mother and A relocate to Singapore to live with him. He also set out the fact that A had met Mr N on his visits to Hong Kong, twice in Singapore, and on other occasions on overseas holidays (at [68] Judgment). These instances were duly recorded in the October 2024 Report . We agree that they are significant and important for A to form her own perception of the relationship she has with Mr N. The Judge further cited Ms

Chan's conclusion that overall, the observation revealed 'a close, supportive and joyful relationship among the Mother, Mr N and A.' (at [69] Judgment). In our view, the Judge had fully considered all the relevant factors when he granted the relocation order.

The Father claims that A conveyed to him that she does not wish to relocate to Singapore and was only instructed by the Mother to communicate otherwise to the experts. The Father has not filed any evidence in support of this allegation and the allegation is contrary to the contents of the reports that the Judge had considered.

Ground 2 has no reasonable prospect of success.

ii)

The financial consideration

As for Ground 3, the Judge specifically considered the financial arrangements, including the Father's outstanding application for leave to appeal as regards to the maintenance pending suit ('MPS') order of 15 April 2024 and the Mother's judgment summons proceedings at [72][78] of the Judgment.

This Court in [2025] HKCA 341 on 11 April 2025 dismissed the Father's application for leave to vary the MPS and interim maintenance order.

Ground 3 has no reasonable prospect of success.

3)

Other matter

The Father in his skeleton submissions at [12] alleged potential conflict of interest between the Judge and himself, as the Judge had previously served as a solicitor against a family member of the Father. The Father has not given particulars of this issue and we do not regard this as a proper ground of appeal with any reasonable prospect of success.

VII.

Conclusion

In conclusion, we are of the view that none of the proposed grounds has a reasonable prospect of success, nor is there any other reason in the interest of justice for granting leave. We therefore refuse the Father's application to appeal against the judgment below.

Accordingly, the Father's application is dismissed.

The Father's application for leave to appeal is totally without merit. We therefore make an order that no party may request the present determination refusing leave to appeal to be reconsidered at an oral hearing inter parties pursuant to Order 59, rule 2A(8) of the Rules of the High Court.

In view of the nature of the application, we will make no order as to costs.

(Peter Cheung)

(H. AuYeung)

Justice of Appeal

Judge of the

Court of First Instance

The Petitioner, unrepresented, acting in person

The Respondent, unrepresented, acting in person

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=174096

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/kk-h-v-pk-h-2025>

Prepared on 28 October 2026 · Esheria